

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 91-353-T - ORDER NO. 92-330
MAY 8, 1992

IN RE: Application of Patricia O'Neil DBA)	
McClain Moving, 4230 Scott Street,)	ORDER
Bldg. C, North Charleston, SC 29406,)	GRANTING
for a Class E Certificate of Public)	APPLICATION
Convenience and Necessity.)	

This matter is before the Public Service Commission of South Carolina (the Commission) on the Application of Patricia O'Neil DBA McClain Moving (the Applicant or McClain Moving), filed on June 5, 1991, for a Class E Certificate of Public Convenience and Necessity¹ to transport property as follows:

HOUSEHOLD GOODS, AS DEFINED IN R.103-211(14): Between points and places within a 100-mile radius of Charleston, South Carolina.

Subsequent to the initiation of this proceeding, the Executive Director of the Commission instructed the Applicant to cause to be published a prepared Notice of Filing in certain newspapers of general circulation in the State of South Carolina. The Notice of Filing indicated the nature of the Application and advised all interested parties desiring to participate in the proceeding of the manner and time in which to file the appropriate pleadings. The

1. "A class E motor carrier is a common carrier of property by motor vehicle which does not operate upon any particular route or particular schedule and which is commonly known as an irregular route common carrier." 26 S.C. Regs. 103-114(1976).

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Notice of Filing was duly published in accordance with the instructions of the Executive Director. Petitions to Intervene were filed by Palmetto Moving & Storage, Inc. (Palmetto), Azalea Moving and Storage (Azalea), Brock Moving and Storage, Inc. (Brock), Charleston Moving and Storage (Charleston), and Comac, Inc. (Comac).²

A hearing was held at the Offices of the Commission on April 22, 1992. The Honorable Marjorie Amos-Frazier presided. The Applicant appeared pro se; the Intervenors were represented by David G. Ingalls; and the Commission Staff was represented by Gayle B. Nichols, Staff Counsel.

Patricia O'Neil and John Floyd testified on behalf of the Applicant. Jay Cook and Laura McMillan testified on behalf of the Intervenors.

After full consideration of the testimony presented and the applicable law, the Commission makes the following findings of fact and conclusions of law:

FINDINGS OF FACT

1. According to S.C. Code Ann. §58-23-330(1991 Supp.), "[a]n applicant applying for a certificate... to operate as a motor vehicle common carrier may be approved upon showing... that the applicant is fit, willing, and able to perform appropriately the proposed service. If an intervenor shows or if the [C]ommission determines that the public convenience and necessity is being

2. Palmetto, Azalea, Brock, Charleston, and Comac will be referred to collectively as the Intervenors.

served already, the [C]ommission may deny the application." The South Carolina Supreme Court has held that while an intervenor's testimony that its business will be adversely affected by the increased competition produced by an increased number of motor carriers is relevant, such testimony "is not determinative and 'should not in itself defeat an application for additional services.'" Welch Moving and Storage Co. v. Public Service Commission, 301 S.C. 262, 391 S.E.2d 556, 557 (1990), citing Greyhound Lines, Inc. v. South Carolina Public Service Commission, 274 S.C. 161, 166, 262 S.E.2d 18, 21 (1980).

2. Patricia O'Neil, owner of McClain Moving, testified that she had twelve years experience in the household goods moving business and previously had operated Best Transfer & Storage, Inc. which was certificated by the Commission. Ms. O'Neil testified that Best Moving & Storage, Inc. had discontinued its business and, consequently, let its certification lapse in 1990.

3. According to the Application, McClain Moving has a net worth of \$44,000, there are no outstanding judgments against McClain Moving, McClain Moving agrees to operate in compliance with the Commission's statutes and regulations, and McClain Moving is aware of the Commission's insurance requirements.

4. Ms. O'Neil testified that McClain Moving has conducted some limited household moves³ but that, until it was granted authority, it did not plan to hire drivers or employees. Ms.

3. There is no evidence in the record that these moves require Commission certification.

O'Neil testified that if the Commission granted McClain Moving authority, it would either repair the two trucks it currently owns or lease or purchase other trucks, but, most likely, it would purchase equipment. Ms. O'Neil explained that McClain Moving was waiting on the Commission's ruling on its Application before it actively participated in the moving business.

5. Ms. O'Neil submitted the letters of three shippers who supported McClain Moving's Application. John Floyd, owner of a furniture refinishing and restoration business, testified that his company presently picked up and delivered its customers' furniture. Mr. Floyd testified that if McClain Moving was granted certification, it would save his company the time and expense of picking up and delivering its customers' furniture and provide it with the convenience of hiring McClain Moving for hauling its customers' furniture. Mr. Floyd testified that McClain Moving, located on the same street as his own business, could respond to his request for a delivery within the same day.

6. Jay Cook, Vice-President of Azalea Moving & Storage, testified that there was no need for an additional household goods mover in the Charleston area. He also testified that, in his opinion, McClain Moving was not fit and able to provide household goods moving services. On cross-examination, Mr. Cook testified that McClain Moving would not be an "additional" mover in the Charleston area because it was already doing business.

7. Laura McMillan, Treasurer of Comac, Inc., testified that years ago when Ms. O'Neil was doing business as Best Transfer &

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Storage, Inc. she had been in a warehouse located on Scott Street, the same street as McClain Moving is now located. She testified that the warehouse was in disarray. Ms. McMillan admitted she did not know if the warehouse was being used by Best Transfer & Storage, Inc.

CONCLUSIONS OF LAW

1. The Applicant has demonstrated that it is fit, willing, and able to provide Class E household goods service to points and places within 100 miles of Charleston, South Carolina. Specifically, the Applicant has established that it has no outstanding judgments against it, that it is familiar with the statutes and regulations governing for-hire motor carrier operations in South Carolina, and that it agrees to operate in compliance with these statutes and regulations. Additionally, the Applicant has demonstrated that it will obtain the equipment which is necessary to provide Class E service and the appropriate insurance which will meet the Commission's requirements. Furthermore, the Applicant has established that it has twelve years of experience in the transportation of household goods. Finally, the Applicant has demonstrated that it is willing to provide Class E service.

2. Moreover, the Commission finds that the Intervenor's testimony concerning the Applicant's lack of fitness to transport household goods unpersuasive. Although it may consider another carrier's opinion as to whether an applicant is fit, it is within the Commission's discretion to determine whether or not an

applicant is in fact fit. Further, the Commission concludes that Ms. Millan did not adequately identify the warehouse located on Scott Street as belonging to Ms. O'Neil.

3. Finally, the Commission concludes that while one witness for the Intervenor suggested that the Charleston area household goods market did not need any new movers, the Commission finds that, in and of itself, increased competition that may result from the approval of McClain Moving's Application is insufficient to defeat the Applicant's request for a Certificate of Public Convenience and Necessity. Welch, supra.

IT IS THEREFORE ORDERED:

1. That the Application for Class E Certificate of Public Convenience and Necessity to transport Household Goods, as defined in R.103-211(14), Between Points and Places within a 100-mile radius of Charleston, South Carolina, is approved.

2. That the Applicant file the proper license fees and other information required by S.C. Code Ann. §58-23-10 et seq. (1976), and by 26 S.C. Regs. 103-100 through 103-208 (1976), within sixty (60) days of the date of this Order, or within such additional time as may be authorized by the Commission.

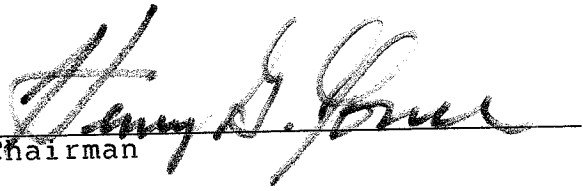
3. That upon compliance with S.C. Code Ann. §58-23-10, et seq. (1976), and the applicable provisions of 26 S.C. Regs. 103-100 through 103-280, a certificate shall be issued to the Applicant authorizing the motor carrier services granted herein.

4. That prior to compliance with such requirements and receipt of a certificate, the motor carrier services authorized

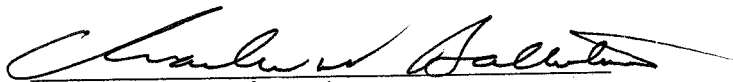
herein may not be provided.

5. That this Order shall remain in full force and effect until further Order of the Commission.

BY ORDER OF THE COMMISSION:


VICE Chairman

ATTEST:


Executive Director

(SEAL)